

DOCKET NO. 578462

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE TEXAS
COMMISSION	§	
	§	
VS.	§	
	§	
ORIGINAL APPLICATION OF	§	
MJ RED LABEL ENTERPRISES LLC	§	
D/B/A CASH COUNTY LINE	§	ALCOHOLIC
(MB, LB)	§	
	§	
HARRIS COUNTY, TEXAS	§	
(SOAH DOCKET NO. 458-09-0544)	§	BEVERAGE COMMISSION

ORDER ADOPTING PROPOSAL FOR DECISION

CAME ON FOR CONSIDERATION this 26th day of January 2009, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Rex Shaver. The hearing convened on November 7, 2008 and adjourned on the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on December 30, 2008. This Proposal For Decision was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein. As of this date no exceptions have been filed.

The Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which are contained in the Proposal For Decision and incorporates those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

IT IS THEREFORE ORDERED, by the Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that the Original Application for the issuance of a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit be **GRANTED**.

This Order will become final and enforceable on February 19, 2009, unless a Motion for Rehearing is filed **before** that date.

By copy of this Order, service shall be made upon all parties in the manner indicated below.

SIGNED this the 26th day of January 2009, at Austin, Texas.



Alan Steen, Administrator
Texas Alcoholic Beverage Commission

Judge Rex Shaver
ADMINISTRATIVE LAW JUDGE
State Office of Administrative Hearings
2020 N. Loop West, Suite 111
Houston, Texas 77018
VIA FACSIMILE: (713) 812-1001

MJ Red Label Enterprises LLC.
d/b/a Cash County Line
RESPONDENT
2830 S Richey Road
Humble, Texas 77338
VIA REGULAR MAIL

R.A. Ricks
PROTESTANT
2820 E. Richey Rd., #B
Humble, TX. 77338
VIA REGULAR MAIL

Worship Tabernacle
Pastor Roy Chapman
PROTESTANT
3002 E. Richey Road
Humble, Texas 77338
VIA U.S. REGULAR MAIL

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

December 30, 2008

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
5806 Mesa Drive
Austin, Texas 78731

VIA REGULAR MAIL

RE: Docket No. 458-09-0544; Texas Alcoholic Beverage Commission vs. MJ Red Label Enterprises LLC d/b/a Cash County Line

Dear Mr. Steer

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN CODE § 155.59(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

Rex Shaver
Administrative Law Judge

RS/mr
Enclosure

xc: Docket Clerk, State Office of Administrative Hearings- **VIA REGULAR MAIL**
Ramona Perry, Staff Attorney, Texas Alcoholic Beverage Commission, 427 W 20th Street, Suite 600, Houston, TX 77008- **VIA REGULAR MAIL**
Lou Bright, Director of Legal Services, Texas Alcoholic Beverage Commission, 5806 Mesa Drive, Austin, TX 78731- **VIA REGULAR MAIL**
MJ Red Label Enterprises LLC d/b/a Cash County Line, Respondent, 2830 E Richey Road, Humble, Texas 77338- **VIA REGULAR MAIL**
John S. Cossum, Attorney for Worship Tabernacle, Protestant, 440 Louisiana, Suite 900, Houston, Texas 77002 - **VIA REGULAR MAIL**

SOAH DOCKET NO. 458-09-0544

TEXAS ALCOHOLIC BEVERAGE	§	BEFORE THE STATE OFFICE
COMMISSION,	§	
Petitioner	§	
	§	
WORSHIP TABERNACLE,	§	
OSCAR VALLEGAS , ET AL.,	§	
Protestants	§	
VS.	§	OF
	§	
ORIGINAL APPLICATION OF MJ RED	§	
LABEL ENTERPRISES LLC, D/B/A	§	
CASH COUNTY LINE,	§	
Respondent	§	
PERMIT NO(S) MB, LB	§	
	§	
HARRIS COUNTY, TEXAS	§	
(TABC CASE NO. 578462)	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

MJ Red Label Enterprises LLC., Respondent, is the applicant for a Mixed Beverage and Mixed Beverage Late Hours permit, to be issued by the Texas Alcoholic Beverage Commission (Commission) for the premises known as Cash County Line, located at 2830 E. Richey Road, Humble, Harris County, Texas, 77338.

Residents living near the proposed premises location as well as members of the Worship Tabernacle, a nearby church protested the application, asserting that Respondent's original application should be denied based on the general welfare, health, peace, morals, and safety of the people, and on the public sense of decency. The Commission's staff (Staff) had no independent evidence to protest the issuance of the permit and address change. The Administrative Law Judge (ALJ) recommends that the original application for permits be granted by the Commission

JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

No contested issues of notice, jurisdiction, or venue were raised in this proceeding. Therefore, these matters are set out in the findings of fact and conclusions of law without further discussion here.

On November 7, 2008, a public hearing was held before Rex Shaver, ALJ, at the State Office of Administrative Hearings, 2020 North Loop W., Suite 111, Houston, Texas. Staff was represented by Ramona Perry, attorney. Protestant Worship Tabernacle was represented by John Cossum, attorney. Protestants R. A. Ricks and Roy Chapman appeared *pro se*. Respondent appeared *pro se*. The record was closed on the same date.

II. LEGAL STANDARDS AND APPLICABLE LAW

The Commission may refuse to issue an original or renewal permit if it has reasonable grounds to believe that the place or manner in which Respondent may conduct its business warrants the refusal based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency. TEX. ALCO. BEV. CODE ANN. § 11.46(a)(8).

III. EVIDENCE

A. Staff's Evidence and Contentions

Documents

Staff presented the Certified Mail Return Receipt for notice of this hearing to Respondent (Exhibit 1), Respondent's original application for a Mixed Beverage Permit and Mixed Beverage Late Hours Permit filed with the Commission (Exhibit 2), TABC Information Report No. 235507.1 (Exhibit 3), and the Administrative Violations Record for both the Respondent and the current

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3. Roy Chapman

Roy Chapman gave comments regarding his concerns surrounding the continuation of the sale of alcoholic beverages at 2830 E. Richey Road in Humble, Texas. Mr. Chapman is the pastor of the Worship Tabernacle, a church, located at 3002 E. Richey Road, in Humble, Texas. The church preaches against drinking alcohol because of perceived family problems associated with its use. Worship Tabernacle conducts worship services at 11:00 a. m. on Sundays with occasional additional activities on Sunday afternoons and evenings. On occasion these activities take place on the property but outside of the church. E. Richey Road is four lanes wide in some portions but narrows to two lanes on the section of roadway where the church and the proposed licensed premises are located. Mr. Chapman fears increased traffic will pose a safety problem for persons driving in that section of roadway.

Mr. Chapman related that he and his parishioners are concerned that the issuance of a Mixed Beverage Late Hours permit and the recent expansion of the parking lot could result in increased activity, including, late night and Sunday operation. Mr. Chapman stated that the predecessor licensee at the same location had agreed to not open on Sundays. No such agreement has been reached with the applicant in this case. In Mr. Chapman's opinion, the issuance of the requested permits would be contrary to the general welfare, health, morals, and safety of the church members and area residents.

C. Respondent's Evidence and Contentions

1. Documents

Respondent offered a 24-page exhibit which included 22 photographs of the interior and exterior of the premises, employee certifications and, management policies (Respondent Ex. No.

2. Michael Cash

Michael Cash testified that he is the organizer of MJ Red Label Enterprises LLC doing business as Cash County Line, the applicant for the original Mixed Beverage and Mixed Beverage Late Hours permits which are the subject of the protest in this case. He was the manager of a licensed premises doing business at 2830 E. Richey Road, Humble, Texas, the same address for which he has requested permits. The most recent license and permits at that address expired on December 2008. The most recent permittee at that address did not sell food and Mr. Cash does not plan to sell food if the permits are granted. He testified that he has taken the required Seller Server Training and has required his future employees to also complete the course. Copies of the certifications were provided in Respondent's Exhibit 1.

Mr. Cash described the area around the premises as rural with some manufacturing businesses on E. Richey Road and some dwellings and a church in the area but not close enough to prevent issuance of the permits. The witness described East Richey Road as being a narrow roadway with a six foot drainage ditch between the premises parking lot and the roadway. There are two driveways across the ditch allowing access to the parking lot. He does not believe that any delivery trucks are unable to use the driveways. He did recall one occasion on which a truck became stuck in the ditch. Mr. Cash blamed that event on an inexperienced driver rather than the placement of the driveway and ditch

Mr. Cash anticipates having the premises open for business Monday through Saturday from 7:00 A. M. until 2:00 A. M. These are the same hours of operation as the prior permittee. He explained that some of the nearby industries have shift work so that there are workers coming off shift so that there are customers as early as 7:00 A. M. The witness testified that while he has no intention of operating the business on Sundays he is unwilling to enter into any agreement that would deprive him of that option in the future. He noted that Sunday sales are prohibited until after 2 noon.

The premises will have a pool table, dart board, and table top video games as well as video poker machines. He does not now, nor will he in the future, allow gambling or gambling machines on the premise. He has never been aware of any drug use or drug sales at that location. It is his current practice to leave the premises around midnight and have the night bartender close up. He has not been made aware of any problem with customers remaining on the premises after the 2:00 A. M. closing time.

IV. ANALYSIS

The evidence and public comment in the instant case shows that Respondent has applied for a Mixed Beverage Permit and a Mixed Beverage Late Hours Permit to do business as Cash County Line at 2830 E. Richey Road in Humble, Harris County, Texas. This is the same location as Richey Road Ice House whose license expired on December 1, 2008. Respondent intends to operate from the same facility. Respondent's manager, Michael S. Cash, was the manager at Richey Road Ice House for 8 months prior to the expiration of that license. Respondent filed an original application for a Mixed Beverage Permit and Mixed Beverage Late Hours Permit on June 24, 2008. The Commission has determined that Respondent has met all Commission requirements for the issuance of the original Mixed Beverage Permit and Mixed Beverage Late Hours Permit and does not join in the protest

Protestants challenged Respondent's original applications maintaining that they should be denied on the basis that the way Respondent may conduct business warrants refusal based on the general welfare, health, peace, morals, safety of the people, and the public sense of decency. TEX. ALCO. BEV. CODE ANN. § 11.46(a)(6). To deny a permit on such basis "some unusual conditions or situations must be shown so as to justify a finding that the place or manner in which the applicant may conduct his business warrants a refusal of a permit." Dienst v. Texas Alcoholic Beverage Commission, 536 S.W.2d 667, 669 (Tex.Civ.App. — Corpus Christi 1976). *See also: Texas Alcoholic Beverage Commission v. Jack E. Mikulanka d/b/a Frigate Club*, 510 S.W.2d 616, 619 (Tex.App. — San Antonio 1974); 650 S.W.2d 208; Kermit Concerned Citizens Committee v.

Colonial Food Stores, Inc., 650 S.W.2d 208, 210 (Tex. App.—El Paso 1983).

The required unusual conditions have been found to exist where the mayor, chief of police, sheriff, property owners and church member opposed the permits on the grounds that granting the permits would create a probable increased traffic hazard, Dienst v. Texas Alcoholic Beverage Commission, 536 S.W.2d 667 (Tex.Civ.App. — Corpus Christi 1976); Helms d/b/a The Thirsty Turtle v. Texas Alcoholic Beverage Commission, 700 S.W.2d 607 (Tex. App. — Corpus Christi 1985).

The evidence in the instant case does not show that issuing the requested permits would increase traffic congestion, create a traffic hazard, or negatively impact the existing nature of the neighborhood. No evidence from any law enforcement officers, elected officials, or highway design and construction engineers was presented to show that the issuance of the requested permits would have either a new negative effect or a new, unusual, or significant threat to traffic safety in the area.

The Protestant, R. A. Ricks, commented that he has heard laughter, music, and automobile noises coming from the licensed premises previously operating at the requested location. He further alleged that he has complained of the noise to local law enforcement. He did not know if any citations or warnings were ever issued to the previous permittee. The Respondent was the manager of the previous licensed premises at the same location, and testified that he was never informed of any noise complaint. No evidence was presented showing that the manner in which the Respondent may conduct business would generate an unacceptable or increased traffic or noise. While it is true that Protestants Chapman and Worship Tabernacle's disapproval of alcoholic beverage consumption is important, and their concern regarding the negative affect of alcohol on families is understandable, such concerns do not rise to the level of "unusual conditions or situations" that "justify a finding that the place or manner in which the applicant may conduct his business warrants a refusal of a permit." Dienst v. Texas Alcoholic Beverage Commission, at 669.

V RECOMMENDATION

Accordingly, the ALJ recommends that Respondent's original application for a Mixed Beverage permit and a Mixed Beverage Late Hours permit for MJ Red Label Enterprises LLC, doing business as Cash County Line, with premises at 2830 E. Richey Road, Humble, Harris County, Texas 77338, be granted

VI. FINDINGS OF FACT

MJ Red Label Enterprises, LLC, Respondent, filed an original application for a Mixed Beverage Permit and Mixed Beverage Late Hours Permit to be issued by the Commission for the premises known as Cash County Line, located at 2830 E. Richey Road, Humble, Harris County, Texas 77338, on June 24, 2008.

2. Respondent has met all Commission requirements for issuance of the permits
3. Commission received a protest from a church and residents of the neighborhood requesting that the original application be denied on grounds that the manner in which applicant may conduct business warrants refusal based on the general welfare, health, peace, morals and safety and on the public sense of decency.
4. A Notice of Hearing dated October 8, 2008, was issued by The Commission's Staff notifying Respondent of the protest and informing the parties of the nature of the hearing, the statutes and rules involved, and the legal authorities under which the hearing was to be held.

On November 7, 2008, a public hearing was held before Rex Shaver, ALJ, at the State Office of Administrative Hearings, 2020 North Loop West, Suite 111, Houston, Texas 77018. Staff was represented by Ramona Perry, attorney. Respondent appeared *pro se*. Protestants R. A. Ricks and Roy Chapman appeared *pro se*. Protestant Worship Tabernacle was represented by John Cossum, attorney. The record was closed on that date.

The premises located at 2830 E. Richey Road, Humble, Harris County, Texas 77338, was until December 1, 2008 the licensed premises of Richey Road Ice House.

There was insufficient evidence to prove that granting the Respondent's original applications would cause a new traffic hazard or unreasonable traffic congestion on E. Richey Road, Humble, Texas or any other roadway in the area.

8. There was insufficient evidence to prove that granting Respondent's applications would